

United States Court of Appeals

Eleventh Circuit
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

John Ley
Clerk

In Reply, Give Number
Of Case and Names of Parties

November 24, 2010

VIA FACSIMILE

TO ALL COUNSEL OF RECORD

Re: No. 08-15590 - Wyon Dale Childers v. Willie L. Floyd

Dear Counsel:

For the purposes of the upcoming en banc rehearing in the above-referenced case, the court desires for counsel to focus their briefs on the following issues:

- (1) Does the Florida appellate court's ruling on Florida Rule 403 in response to Childers's Confrontation Clause claim constitute an adjudication "on the merits" sufficient to grant the ruling deference under 28 U.S.C. § 2254(d)? Address whether this argument is "waivable" and, if so, whether Childers waived it.**
- (2) If not reviewed under § 2254(d) deference, was the exclusion of the Notice of Revocation and the Elliot acquittal from cross-examination a violation of Childers's Confrontation Clause rights? Analyze this question in light of Delaware v. Van Arsdall, 475 U.S. 673, 106 S. Ct. 1431, 89 L. Ed 2d 674 (1986), and 28 U.S.C. § 2254(e)(1).**
- (3) If reviewed under § 2254(d) deference, was the Florida appellate court's opinion an unreasonable application of clearly established federal law?**

Appellant's en banc brief shall be filed in the Clerk's Office in Atlanta by 5:00 p.m., Wednesday, December 22, 2010. Appellee's en banc brief shall be filed in the Clerk's Office in Atlanta by 5:00 p.m., Wednesday, January 19, 2011. Any en banc reply brief by the Appellant must be filed in the Clerk's Office in Atlanta by 5:00 p.m., Friday, January 28, 2011. **NO EXTENSIONS WILL BE GRANTED.** An original and 18 copies of the en banc briefs should be filed (appellant's in blue covers, appellee's in red covers and any reply in gray covers). The parties are expected to insure that all other parties receive a copy of their briefs before the close of business on the day of filing (facsimile, e-mail, etc.). **NO TIME FOR MAILING SHALL BE ALLOWED.** The filing of an en banc amicus briefs is governed by 11th Cir. R. 35-8. All parties are also required to upload the brief in electronic format to the court's Web site as described in 11th Cir. R. 31-5.

All counsel are requested to file 16 copies of their original opening panel briefs, record excerpts and supplemental authorities prior to 5:00 p.m., Wednesday, December 22, 2010.

Oral argument will be conducted during the week of February 14, 2011, in Atlanta, Georgia. Counsel will receive subsequent correspondence regarding the amount of time, specific date and time of oral argument.

Thank you for your attention.

Sincerely,

JOHN LEY, Clerk

By: _____
Joyce Pope
Calendar Clerk/Court Sessions Supervisor
404.335.6131

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Clerk, U.S. District Court (NFL-Pensacola)
Hon. Lacey A. Collier